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VIA COURIER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Petition of Telco Communications Group, Inc. for Waiver of Section 64.1301 of the Commission's Rules

Dear Mr. Caton:

Enclosed for filing please find an original and four (4) copies of Petition of Telco Communications Group, Inc. for Waiver of Section 64.1301 of the Commission's Rules, CC Docket No. 96-128. Also enclosed is an extra copy to be stamped and returned.

Please direct any questions you may have regarding this filing to the undersigned of this office.

Respectfully submitted,

Dana Frix
Pamela Arluk

Its Counsel

cc: Attached Service List
Natalie Marine-Street

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List ABCDE

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the Telecommunications	)	
Act of 1996	)	

PETITION OF TELCO COMMUNICATIONS GROUP, INC. FOR WAIVER OF SECTION 64.1301 OF THE COMMISSION'S RULES

Telco Communications Group, Inc. on behalf of its operating subsidiaries ("Telco") by its undersigned counsel and pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, respectfully petitions for a waiver of Section 64.1301 of the Commission's Rules to permit Telco to pay compensation to payphone providers on a per-call basis during the one-year interim compensation period provided by the Commission's Payphone Order.[1] Telco requests that the Commission allow it to pay its portion of payphone compensation on a per-call basis rather than the flat rate per-phone basis from November 6, 1996, the date the interim compensation period became

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[1] In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, CC Docket No. 96-128 (rel. Sept. 20, 1996) ("Payphone Order"), *Order on Reconsideration*, CC Docket No. 96-128 (rel. Nov. 8, 1996) ("Reconsideration Order"). These Orders were appealed by numerous parties before the United States Court of Appeals for the D.C. Circuit. The appeals were consolidated in Docket No. 96-1394 and are currently pending.

effective, through November 5, 1997, the end of the interim compensation period, because Telco has the capability to track its calls for that entire period.[2]

Section 1.3 of the Commission's rules permits any provision of the Commission's rules to be waived "if good cause therefor is shown." Waiver of Section 64.1301 in this instance would further the policies expressed by the Telecommunications Act of 1996 (the "Act") and the Commission's Payphone Order to fairly compensate payphone providers for dial-around calls completed from a pay telephone and would avoid a plainly unjust situation in which Telco would be required to compensate payphone providers for calls that it is simply not carrying.

I. A Per-Call Compensation Plan Furthers the Policies of Both the Act and the Payphone Order

Section 276 of the Act provides that the Commission is required to prescribe regulations that "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." Accordingly, carriers are obligated to transition to an industry structure in which carriers track and compensate payphone providers on a per-call basis for compensable calls as defined by the Payphone Order.[3]

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[2] The Commission previously has granted retroactive waivers allowing carriers to compensate payphone providers on a per-call basis. *See* In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Memorandum Opinion and Order*, CC Docket No. 91-35 (rel. March 7, 1997). In this decision, the Commission granted Oncor's Petition to compensate payphone providers on a per-call basis for the period of April 1, 1996 through November 5, 1996.

[3] Payphone Order at ¶¶ 52-54. The Commission determined that payphone providers should receive compensation for access code calls, subscriber 800 and other toll-free number calls.

Recognizing the Act's requirement for compensation on a per-call basis, in its Payphone Order, the Commission provided that carriers must "track all compensable calls they receive from payphones, through any arrangement they choose, as soon as possible, but no later than one year from the effective date of the rules adopted in this proceeding."[4] During the interim year (from November 6, 1996 to November 5, 1997), the Commission adopted the interim compensation plan at issue in this Petition. Pursuant to the interim compensation plan, carriers earning over $100 million in revenues would pay monthly compensation to independent payphone providers on a flat rate per- phone basis. The amount of each carrier's obligation was calculated based on the carrier's reported annual toll revenues for calendar year 1995.[5] The Commission, however, provided for a waiver of this interim compensation plan in favor of per-call compensation. In its Reconsideration Order, the Commission recognized that some carriers already have the capability to track payphone calls on a per-call basis. The Commission stated that such carriers should have the option of paying on a per-call basis and should petition the Commission for a waiver to adopt such an arrangement.[6]

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4 Payphone Order at ¶ 99.

5 Payphone Order at ¶119.

6 Reconsideration Order at ¶ 129.

II. Granting Telco's Waiver Petition Would Serve the Public Interest

A. The Interim Compensation Scheme Requires Telco to Compensate Payphone Providers For Calls That It Does Not Carry

Under the current interim compensation scheme, Telco is required to pay independent payphone providers $0.1467954 per month per payphone. When multiplied by the estimated 350,000 independent payphones, Telco is required to compensate independent payphone providers approximately $51,378.39 per month. Moreover, if the Commission allows the incumbent LECs to participate in the interim compensation scheme subsequent to April 15, 1997--the date by which LECs are required to eliminate payphone subsidies and reclassify payphone assets--Telco could be required to compensate all payphone owners as much as $271,571.49 a month when the approximately 1.5 million LEC-owned payphones are included.

Requiring Telco to compensate payphone owners on a flat rate per-phone basis would be patently unfair because Telco's overall revenues bear little relationship to its number of payphone calls. Telco derives the vast majority of its revenues through casual calling, which requires customers to dial one of Telco's five-digit carrier identification codes prior to placing direct dialed long distance calls. This service bills calls to the telephone from which the call is dialed. For obvious reasons, such calls cannot be completed from payphones. Specifically, when ordering originating access circuits from the LEC, Telco instructs the LEC to prohibit the completion of casual calls (either direct dialed or operator assisted) which would be billed to the assisting telephone (i.e., the payphone).

In addition, Telco does not heavily market other services that allow dial-around calls to be made from payphones, such as 800 services or calling card services. Consequently, Telco receives an extraordinarily small percentage of calls from payphones, compared to carriers like MCI and AT&T which market heavily services that are intended to be used from a payphone. For example, during the month of January 1997, Telco received only 80, 675 payphone calls from all payphones--both LEC-owned and COCOTs-- out of a total of almost 29 million calls. (This accounted for less than one-half of one percent of Telco's calls.) As noted above, according to the Commission's figures, there are approximately 350,000 independent payphones and almost 1.5 million LEC payphones. Thus, independent payphones comprise about 19% of all payphones. Nineteen percent of Telco's January 1997 payphone calls is approximately 15,328 calls. When this number of payphone calls is multiplied by the per-call charge of $.35, it amounts to approximately $5,364 in compensation for independent payphone calls for the month of January 1997. In contrast, the Commission's interim compensation plan would require Telco to pay to independent payphone providers $51,378.39. Thus, under the interim compensation plan, Telco would be required to overcompensate independent payphone providers more than $46,000 (or approximately $552,000 for the entire compensation period).

If the LECs are permitted to participate in the Commission's scheme after April 15, 1997, the situation becomes even more unjust. Telco could potentially be required to compensate LECs as much as $220,193.10 per month for payphone calls. However, if Telco were permitted to compensate on a per-call basis, its obligation would only amount to approximately $22,872.00 per month. (Based on 81% of its January 1997 payphone calls multiplied by $.35.) Telco would therefore be overcompensating LECs almost $200,000 per month under the Commission's interim compensation scheme.

Accordingly, requiring Telco to compensate payphone owners pursuant to the flat rate compensation scheme would be patently irrational and unconscionable. Moreover, such a scheme plainly would be contrary to the public interest and would violate the underlying intent of the Telecommunications Act of 1996 requiring "fair" compensation for payphone providers.

B. Telco Is Able To Track Calls From Payphones

Telco's digital switching facilities, advanced customer database technology, and proprietary data processing algorithms enable the Company to calculate and pay dial-around compensation to payphone providers on a per-call basis.

1. Switching Facilities Provide Information on Call Source

The Company currently operates six DSC DEX 600S, 600 and 600E digital telecommunications switches in Ft. Lauderdale, FL; Davenport Iowa; Chattanooga, TN; Austin, TX; Washington, D.C.; and Las Vegas, NV. These digital switches record information about the source of each call placed on the Company's network in the Originating Number field of the call detail record. Telco regularly polls these call detail records (CDRs) from the various switch sites via X.25 links, and it is this information which will be utilized in order to appropriately track payphone calls.

2. Telco *Payphone Database* Identifies Payphone ANIs and Owner Information

As specified in the Commission's Payphone Order, all LECs are required to provide Telco with a list of the ANIs of all payphones in the LEC's service area.[7] The Commission has required this list to be provided to carrier-payors within 30 days of the close of each compensation period.[8]

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[7] Payphone Order at ¶ 112.

[8] Payphone Order at ¶ 113.

Upon receipt of these lists, Telco enters this information into its *Payphone Database*. Telco's *Payphone Database* is based upon customized technology utilized by the Company to bill its own customers. It includes fields to capture the following information relative to each COCOT: Company Name, Address, Contact Name, Contact Phone, Contact Fax, and all ANIs identified as belonging to that COCOT.

3. Proprietary Data Processing Algorithm Summarizes Information

After polling the CDRs from the switch sites, the Company processes the raw switch data into a format that can be used to produce end-user invoices and traffic summaries. This data processing is executed on specially designed personal computers operating a proprietary software program. After the raw switch data is formatted, the Company will compare the Originating Number field in each CDR against the information contained in Telco's *Payphone Database*. Telco will then prepare a summary of the number of completed calls for each ANI. Finally, Telco will consult the *Payphone Database* again in order to tie each individual ANI to the appropriate COCOT provider and calculate the amount owed to each COCOT provider.

If granted this waiver, Telco will be able to use this database to track its calls from November 6, 1996, the beginning date for the Commission's interim compensation plan. In addition, if any LEC becomes lawfully entitled to interim compensation after April 15, 1997, Telco will track those payphone calls in the same manner.

Granting Telco's waiver would ensure a cost-based approach to payphone compensation by basing Telco's obligation on the actual number of compensable calls from which it benefits, rather than an arbitrary number based on its toll revenues. Although Telco is willing to fairly compensate payphone providers, granting Telco a waiver to compensate on a per-call basis would ensure both that payphone providers are fairly compensated and that Telco is not paying higher than its share of the burden. Accordingly, a waiver of the Commission's interim compensation mechanism allowing Telco to compensate payphone providers on a per-call basis would more fairly further the policies underlying the Telecommunications Act and the Commission's Payphone Order.

III. The Commission Previously Granted Similar Waivers

Recognizing the superiority of compensating payphone providers on a per-call rather than a per-phone basis, the Commission granted both AT&T and Sprint waivers prior to its recent Payphone Order to allow them to pay per-call compensation to payphone providers.[9] In granting the waivers, the Commission expressed its preference for compensating payphone providers on a per-call basis and determined that allowing carriers with the technical capability to compensate in that manner furthered the public interest. Using the same analysis, the Commission very recently granted Oncor a waiver allowing it to pay its portion of CC Docket No. 91-35 compensation to payphone providers on a per-call basis for the period of April 1, 1996 through November 5, 1996.[10] The Commission again expressed a clear preference for compensating payphone providers on a per-call basis.

The identical public interest objectives are furthered by this waiver request. Allowing Telco to compensate payphone providers per-call furthers the goals of both the Act and the Payphone

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[9] *See, e.g.*, in the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Memorandum Opinion and Order*, DA 94-1612 (rel. Dec. 29, 1994).

[10] In The Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Memorandum Opinion and Order*, DA 97-482 (rel. March 7, 1997).

Order by ensuring that payphone providers receive fair compensation for each and every call as required by the Act.

CONCLUSION

Granting Telco's waiver will further both the policies underlying the Telecommunications Act and the Commission's Payphone Order by moving toward a per-call payphone compensation plan. Allowing Telco to compensate on a per-call basis will ensure that the payphone providers are compensated for all of Telco's compensable calls and will further ensure that Telco is not unfairly burdened by being required to subsidize the calls of other carriers.

Respectfully Submitted,

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March 24, 1997

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CERTIFICATE OF SERVICE

I, Jeannine Allen, hereby certify that a copy of the foregoing **Petition of Telco Communications Group, Inc. For a Waiver of Section 64.1301 of the Commission's Rules** was sent to each of the following parties by hand delivery on this 24th day of March, 1997.

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